

2005 DRAFTING REQUEST

Bill

Received: **05/27/2005**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Rep. Albers**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters: **mlief**

Subject: **Local Gov't - munis generally
Local Gov't - counties
Local Gov't - zoning**

Extra Copies: **SRM**

Submit via email: **YES**

Requester's email: **Rep.Albers@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to the Smart Growth statute, changes to county zoning procedures

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3	mshovers 10/03/2005	csicilia 10/03/2005	pgreensl 10/03/2005	_____	mbarman 10/04/2005	mbarman 10/04/2005	

FE Sent For: 08/15/2005.

("1")

<END>

old
Version

10-11-2005
("3")

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13 MES 9/30/05

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13 js
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05

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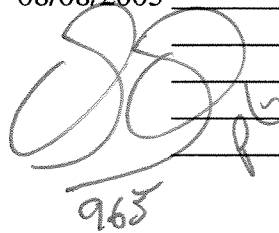
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12 MES 9/2/05 12mk 9/6

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4/1" 8/15/05

Joyce

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Subject: **Local Gov't - munis generally
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Requester's email: **Rep.Albers@legis.state.wi.us**

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11 MES 8/12/05

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May Contact:

Addl. Drafters: **MJL**

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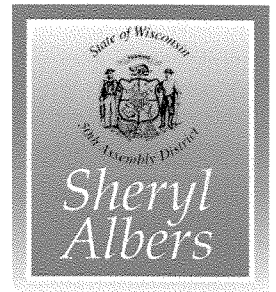
/pl/mk 8/5

11 MES 6/22/05

885

FE Sent For:

<END>



To: LRB – Drafting
From: Representative Sheryl K. Albers
Date: May 27, 2005
Subject: Changes to comprehensive planning

Please draft a 2005 bill based on the following language. I would like to have this language available for a public hearing on June 15th. Please contact my office with any questions you might have. Thank you.

1. Amendments to County Zoning Statute

59.69(2)(a)1.

1. Except as provided under subd. 2., the board may ~~create a planning and zoning committee as a county board agency or may create a planning and zoning commission consisting wholly or partially of persons who are not members of the board, designated the county zoning agency. In lieu of creating a committee or commission for this purpose, the board may designate a single previously established committee or commission as the county zoning agency, which shall be the sole committee~~ authorized to act in all matters pertaining to county planning and zoning, including ordinance development, amendment and revision, conditional use permits, review and approval of town land use plans and county development plans. The Committee designated to act as the county zoning agency shall consist of a majority of supervisors whose districts are composed of a majority of persons residing in unincorporated areas.

[EXPLANATION: This change requires that all county zoning actions be taken by a committee composed of a majority of rural supervisors].

(3) The county development plan.

(a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and shall have jurisdiction of areas within incorporated jurisdictions when multiple bodies agree by

Section #. 59.69 (3) (a) of the statutes is amended to read:

(7) - changes in first sentence seems no diff. than current law -
shall have jurisdiction of
59.69 (3) (a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions *when multiple bodies agree* whose governing bodies by resolution *agree* to *have* *county development* their areas included in the county's development plan. The plan may be adopted in whole or in part *a vote of the full* and may be amended by *the board* *when* and endorsed by the governing bodies of *unincorporated and* *inc. inst.* jurisdictions included in the plan. *The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan.* Beginning on January 1, 2010, if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214.

resolution to have their areas included in the county's development plan. The county development plan may be adopted in whole or in part and may be amended by a vote of the full board when endorsed by the governing bodies of unincorporated and incorporated jurisdictions included in the plan. Beginning on January 1, 2010, if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).

(b) The county development plan shall include the master plan, if any, of any city or village or new town, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village or town, that was adopted under s. 62.23 (6) in the county, without change.

(c) The county development plan may be in the form of descriptive material, reports, charts, diagrams or maps. Each element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.

(d) The county zoning agency shall hold at least one public hearing on the county development plan or revisions to the plan before approving it. Hearings shall be held in unincorporated areas impacted by proposed modifications. After approval of the plan the county zoning agency shall submit the plan to the full board for its consideration. The plan shall be adopted by resolution and when adopted it shall be certified as provided in sub. (2) (f). The development plan shall serve as the guide for public and private actions and to assure that decisions regarding the development of public and private property are neither arbitrary nor capricious.

(e) A town's comprehensive plan under sec. 66.1001, master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such plan was adopted ~~action occurs~~ before the adoption of a county development plan. Any boundary agreements adopted prior to the effective date of this bill shall remain in effect.

[These changes require that town plans and official maps be included in the County plan. As the result of the change, the County could plan only for towns, villages and cities which agree to allow the county to do so].

66.1001 Comprehensive planning.

(intro) The Legislature finds that local land use planning may provide greater efficiencies in managing current and future public expenditures and determining where development should occur. In order to assure that planning considers appropriate factors and information and does not ban legitimate commercial activity, the Legislature adopts the following elements to guide the formulation of comprehensive plans. These guidelines are procedural, and shall not be construed as favoring any particular philosophy of development or mandating any restriction or curtailment of growth or development.

- 1) redundant
 - 1) stat shld contain all nec. provisions in substantive text
 - 2) undefined terms
 - 3) unforeseen effects
- OK w/ recodification const

[This language is designed to make it clear that the planning law does not endorse a particular political agenda].

(1) **Definitions.** In this section:

(a) "Comprehensive plan" means:

1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).
2. For a city or a village, or for a town that exercises village powers under s. 60.22 (3), a master plan that is adopted or amended under s. 62.23 (2) or (3).
3. For a regional planning commission, a master plan that is adopted or amended under s. 66.0309 (8), (9) or (10).

(am) "consistent with" means that the plan provides supporting information or policy conclusions for a regulation which is sufficient to form a reasonable basis for the regulation.

[This definition is added in an attempt to avoid litigation after 2010 about whether regulations are or are not "consistent with" the plan].

- (b) "Local governmental unit" means a city, village, town, county or regional planning commission that may adopt, prepare or amend a comprehensive plan.
- (c) "Political subdivision" means a city, village, town, or county that may adopt, prepare, or amend a comprehensive plan.

(2) **Contents of a comprehensive plan.** A comprehensive plan shall contain all of the following elements:

(a) *Issues and opportunities element.* Background information on the local governmental unit and a statement of overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period. Background information shall include population, household and employment forecasts that the local governmental unit uses in developing its comprehensive plan, and demographic trends, age distribution, educational levels, income levels and employment characteristics that exist within the local governmental unit.

(b) *Housing element.* A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing housing demand and an appropriate share of forecasted housing demand in the county and region. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit's housing stock. The element shall also identify specific policies and programs that promote the development of housing and

seems to be
no changes

provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock. The element shall provide for annual reconsideration of requests by landowners who wish to include new land in the housing base.

(c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, electric personal assistive mobility devices, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

(d) *Utilities and community facilities element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants including co-generation plants, and transmission lines, cemeteries, health care facilities, child care facilities and other public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and other facilities that serve the local governmental unit, its employees, and residents, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) *Agricultural, natural and cultural resources element.* A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

in current law

seems to be
no change

(f) *Economic development element.* A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses. The element shall also identify county, regional and state economic development programs that apply to the local governmental unit.

(g) *Intergovernmental cooperation element.* A compilation of objectives, policies, goals, maps and programs for joint planning and decision making with other jurisdictions, including school districts and adjacent local governmental units, for siting and building public facilities and sharing public services. The element shall analyze the relationship of the local governmental unit to school districts and adjacent local governmental units, and to the region, the state and other governmental units. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall identify existing or potential conflicts between the local governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) *Land-use element.* A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property and any lands set aside for special protection based on reviewable scientific evidence. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agricultural, residential, commercial, industrial and other public and private uses. The element shall analyze county and regional trends in the supply, demand and price of land, opportunities for redevelopment, existing and potential land-use conflicts, and areas where buffers may be needed to reduce land use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that distinguishes between current land uses and future land uses and indicates agricultural soils classified by productivity, non-developable land, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be provided in the future, consistent with the timetable described in par. (d), and the general location of future land uses by net density and other classifications.

(i) *Property rights element.* A compilation of objectives, policies, goals, and programs to compensate landowners for any development rights that may be lost should the plan specify additional protection for property that would otherwise be developable.

(j) *Implementation element.* A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (i). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

(3) Actions, procedures that must be consistent with comprehensive plans.

Beginning on January 1, 2010, if a local governmental unit has a population of more than 1,500 persons and engages in any of the following actions, those actions shall be consistent with that local governmental unit's comprehensive plan:

[This change makes the comprehensive planning law law optional for communities of less than 1500 people].

(g) Official mapping established or amended under s. 62.23 (6).

(h) Local subdivision regulation under s. 236.45 or 236.46.

(j) County zoning ordinances enacted or amended under s. 59.69.

(k) City or village zoning ordinances enacted or amended under s. 62.23 (7).

(L) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.

(q) Zoning of shorelands or wetlands in shorelands under s. 59.692, 61.351 or 62.231.

(3m) In determining whether or not the actions enumerated in subsec. (3) are consistent with the comprehensive plan, a court shall conclude that an action is consistent unless the plan so utterly fails to provide support for the regulation that the action is arbitrary and capricious. No action challenging the consistency of a regulation may be brought more than 120 days after the adoption of the comprehensive plan or the adoption of the action which is challenged. If an

with the plan unless the action is not supported by any aspect of any of the elements of the comprehensive plan.

action is inconsistent with the adopted comprehensive plan, the court shall grant equitable relief compelling adoption of an action which is consistent with the plan.

[This is also an anti-litigation provision.]

(4) Procedures for adopting comprehensive plans. A local governmental unit shall comply with all of the following before its comprehensive plan may take effect:

(a) The governing body of a local governmental unit shall adopt, prior to development of a plan, written procedures that are designed to foster public participation and protection of the rights of landowners, including open discussion, communication programs, information services, and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative, or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. The written procedures shall describe the methods the governing body of a local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to owners of property, or to persons who have a leasehold interest in property pursuant to which the persons may extract nonmetallic mineral resources in or on property, in which the allowable use or intensity of use of the property is changed by the comprehensive plan.

(b) The plan commission or other body specified under s. 59.69(2) that is authorized to prepare or amend a comprehensive plan may recommend the adoption or amendment of a comprehensive plan only by adopting a resolution by a majority vote of the entire body. The vote shall be recorded in the official minutes of the body. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan. A copy of the adopted comprehensive plan shall be forwarded to the Department of Administration, which shall post all adopted comprehensive plans on a website and shall promulgate rules necessary to meet the requirements of this section. One copy of an adopted comprehensive plan, or of an amendment to such a plan, shall be sent to all of the following:

1. Each governmental body that is located in whole or in part within the boundaries of the local governmental unit.

2. The clerk of every local governmental unit that is adjacent to the local governmental unit that is the subject of the plan that is adopted or amended as described in par. (b) (intro.).

(c) If a town has elected to exercise village powers, the town may adopt a comprehensive plan as a master plan under sec. 62.23, Wis. Stats., without approval or authority from the County.

[This makes it clear that town plans need not be approved by the County].

2. equit. to whom? -
req. court to
legislator.
Not needed.
Stat requires
actions to be
consistent w/
comp. plan -
Not needed -
no legal effort
except maybe
requiring local
to legislate -
what if local
decides they
don't want to
act?

seems
to
be
no
change

New -
But must
Am.
60.62(3)
if doesn't
belong here in
a 60.601

Joyce, Mark Patrowski;

(MOL/K)

unless the ord/req is unsupported,
any aspect of any of the elements of
the plan

After annexation, town plan controls
extraterr zone area unless there's a
boundary agreement

CR; jnt comm for ET plat review
see memo

- ① once the plat is approved by the LCU, it gives
the developer the rt to develop according to
the plat for 5 yrs

Am) 66.1001 (3) to req LCA to issue written findings as to how the action is consistent w/ the plan - can only look to local plans

Am, 66.1001 (4)(a) to:

1) give all landowners 60 days from start of planning p/d to submit written ~~testimony~~ comments + recommendations for their vision of their own property & how they feel the use of their prop may change over 10 yrs --

Planning commission must consider all written comments

County not expected to apply consistency w/ all towns - only consider w/ town re/no plan

Intergovernmental coop -

L&U clerk shall attempt to determine which adjacent / contg L&Us may be affected by ^{planning, relations} ~~by proposed~~ AM; or ~~environment~~ to ~~the~~ ~~contg~~ plan to land that abuts territory in another L&U -

govt officials in abutting L&U may submit written comments on their own plan - - notifying ~~the~~ L&U ~~AM~~ must consider the written comments

Findings

Steve Anders

From: Sheryl Albers [skalbers@mwt.net]
Sent: Tuesday, May 24, 2005 20:14
To: 'Steve Anders'; 'Gruber, Ryan'
Subject: FW: comp planning issues

-----Original Message-----

From: lgurney@co.sauk.wi.us [mailto:lgurney@co.sauk.wi.us]
Sent: Tuesday, May 24, 2005 2:46 PM
To: skalbers@mwt.net
Subject: comp planning issues

This is a recap of the proposal forwarded by the County Planning Directors to Matt Stohr of WCA for discussion with the Town's Association for making legislative changes to the planning laws.

Again, the issue identified by the Planning Directors was the language contained within 59.69(3)(b) of the statutes that requires county plans to include the plans of any city and village without change. It is this requirement that creates a disadvantage to Towns and in our minds the center of the "control" issue. As a county, we do not have the option of accepting Town Plans or negotiating compromises where there are inherent conflicts because of this requirement. Then in turn, the Towns become agitated with the Counties because they feel like their losing control. The other problem we have is the consistency requirement for zoning and land division regulations with comprehensive plans. How can the Counties be assured that their decisions will be consistent in relation to zoning and land divisions when the cities and villages have not included the counties in the planning process and have shown nothing but disregard for the county ordinances when they prepare their plans. These current statutes lead to conflict rather than promoting cooperation amongst local units of government.

Our suggestion for planning was as follows:

1. Make an amendment to 66.1001 that reads something like:


In unincorporated areas with overlapping planning jurisdictions, the plans developed under the authority granted in 59.69(3) and 62.23 must be consistent. (This in essence means that the counties plans will reflect the local plans)

2. Require comprehensive revision of zoning ordinances under 59.69(5)(d) within a timeframe of say 3 years starting at the time of the completion and adoption of a county's comprehensive plan.

3. Provide Towns an opportunity to opt out of County Zoning with the following conditions:

- a. the Town must have completed a comprehensive plan in accordance with 66.1001

- b. the Town must adopt its own zoning ordinance that is at least as restrictive as the county's, which is much like the requirements for shoreland zoning for newly annexed lands.

- c. Counties that do not have County Zoning should have the same authorities granted under ss 60.62(3) as counties with County Zoning. 

Another idea that I had thrown out to Matt from WCA was in relation to the first item listed here. It read something like this:

59.69(3)(b) The development plan shall include the master plan, if any, of

any city or village, that was adopted under 62.23(2) or (3) and the official map, if any, of such city or village, that was adopted under 62.23(6) in the county, without change, within the city of villages incorporated limits. Planned areas that lie outside of the incorporated limits shall be included within the development plan, without change, only if the city or village has entered into a cooperative boundary agreement in accordance with 66.0307 or has adopted extraterritorial zoning in accordance with 62.23(7a).

Note: In essence, the county plans would only accept the city or village plans without change outside of their limits if they have demonstrated an ability to work cooperatively with the neighboring towns in the form of a cooperative boundary agreement or through the establishment of a joint commission with equal representation. This is just another idea on how to improve the area of conflict which is the unincorporated areas outside of a village or city.

Finally, as discussed, I also have a major problem with the way the ET authority is currently established in state law with a split between ET zoning and ET plat review authority. In my opinion, the whole thing would work better if the same requirements for a joint commission of equal representation now required to ET zoning under 62.23(7a) was applied in the same manner to ET plat approval. That is require a joint commission of equal representation for ET Plat approval regulations as well.

Hope this info finds you well. As always, thanks for lending me your ear for a few minutes. I hope you feel as I do that it is time well spent.

Lance